

§ 308.128 Grounds for cease-and-desist orders.

(a) *General rule.* The Board of Directors or its designee may issue and have served upon any insured nonmember bank or an institution-affiliated party a notice, as set forth in § 308.18 of the Uniform Rules for practices and violations as described in § 308.127.

(b) *Extraterritorial acts of foreign banks.* An act, violation or practice committed outside the United States by a foreign bank or an institution-affiliated party that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under § 308.131 of this subpart, shall be a ground for an order if the Board of Directors or its designee finds that:

(1) The act, violation or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act, violation or practice committed within any state, territory, or possession of the United States or the District of Columbia which act, violation or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act, violation or practice, if proven, would adversely affect the insurance risk of the FDIC.

§ 308.129 Notice to state supervisory authority.

The Board of Directors or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart G of this part, and the grounds thereof. Any proceedings shall be conducted according to subpart G of this part, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action. No insured institution or other party who is the subject of any notice or order issued by the FDIC under this section shall have standing to raise the requirements of this subpart as grounds for attacking the validity of any such notice or order.

§ 308.130 Effective date of order and service on bank.

(a) *Effective date.* A cease-and-desist order issued by the Board of Directors after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of 30 days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board of Directors or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the respondent, the cease-and-desist order shall also be served upon the bank.

§ 308.131 Temporary cease-and-desist order.

(a) *Issuance.* (1) When the Board of Directors or its designee determines that the violation, or the unsafe or unsound practice, as specified in the notice, or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the bank, or is likely to weaken the condition of the bank or otherwise prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)) and § 308.128 of this subpart, the Board of Directors or its designee may issue a temporary order requiring the bank or an institution-affiliated party to immediately cease and desist from any such violation, practice or to take affirmative action to prevent such insolvency, dissipation, condition or prejudice pending completion of the proceedings under section 8(b) of the FDIA (12 U.S.C. 1818(b)).

(2) When the Board of Directors or its designee issues a Notice of charges pursuant to 12 U.S.C. 1818(b)(1) which specifies on the basis of particular facts and circumstances that a bank's books and records are so incomplete or inaccurate that the FDIC is unable, through the normal supervisory process, to determine the financial condition of the bank or the details or purpose of any transaction or transactions that may have a material effect on the